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**From:** Sengco, Mario [Sengco.Mario@epa.gov]  
**Sent:** 1/5/2022 9:38:54 PM  
**To:** Wirick, Holiday [wirick.holiday@epa.gov]  
**CC:** Fleisig, Erica [Fleisig.Erica@epa.gov]; Todd, Andrew [Todd.Andrew@epa.gov]  
**Subject:** RE: Question about ND's chronic criterion for mercury for the protection of aquatic life

Thanks, Holly.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Mario

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**From:** Wirick, Holiday <wirick.holiday@epa.gov>  
**Sent:** Wednesday, January 5, 2022 4:17 PM  
**To:** Sengco, Mario <Sengco.Mario@epa.gov>  
**Cc:** Fleisig, Erica <Fleisig.Erica@epa.gov>; Todd, Andrew <Todd.Andrew@epa.gov>  
**Subject:** Re: Question about ND's chronic criterion for mercury for the protection of aquatic life

Hi Mario, there are several submission documents (AG cert, public notice, newspaper publications, etc.). Do you want everything that the state sent? If you want to take a look at the list of dox the state submitted it's in the ND DEQ WQS submittal in WATA (6/18/21). I'm happy to send you any of the documents you wish.

Thanks!

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**From:** Sengco, Mario <Sengco.Mario@epa.gov>  
**Sent:** Wednesday, January 5, 2022 1:44 PM  
**To:** Wirick, Holiday <wirick.holiday@epa.gov>  
**Cc:** Fleisig, Erica <Fleisig.Erica@epa.gov>; Todd, Andrew <Todd.Andrew@epa.gov>  
**Subject:** RE: Question about ND's chronic criterion for mercury for the protection of aquatic life

Thanks. I forwarded this to HECD.

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Mario

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**From:** Wirick, Holiday <wirick.holiday@epa.gov>  
**Sent:** Wednesday, January 5, 2022 3:36 PM  
**To:** Sengco, Mario <Sengco.Mario@epa.gov>  
**Cc:** Fleisig, Erica <Fleisig.Erica@epa.gov>; Todd, Andrew <Todd.Andrew@epa.gov>  
**Subject:** Re: Question about ND's chronic criterion for mercury for the protection of aquatic life

Hi Mario, attached is the Notice of Intent to amend the rules with a summary of the proposed changes. On p. 2 DEQ says the update to the chronic ALC for mercury reflects the CWA Section 304(a) criteria recommendation.

Also attached is the comments received and DEQ's responses. Pages 2-4 address Hg.

**Ex. 5 Deliberative Process (DP)**

**From:** Sengco, Mario <Sengco.Mario@epa.gov>  
**Sent:** Wednesday, January 5, 2022 12:39 PM  
**To:** Wirick, Holiday <wirick.holiday@epa.gov>  
**Cc:** Fleisig, Erica <Fleisig.Erica@epa.gov>; Todd, Andrew <Todd.Andrew@epa.gov>  
**Subject:** RE: Question about ND's chronic criterion for mercury for the protection of aquatic life

Hi, Holly

Could you please send me ND's supporting documentation/technical support for mercury that I can review and forward to HECD

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

Thanks,

Mario

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**From:** Wirick, Holiday <wirick.holiday@epa.gov>  
**Sent:** Friday, July 23, 2021 3:48 PM  
**To:** Sengco, Mario <Sengco.Mario@epa.gov>  
**Cc:** Fleisig, Erica <Fleisig.Erica@epa.gov>; Todd, Andrew <Todd.Andrew@epa.gov>  
**Subject:** Question about ND's chronic criterion for mercury for the protection of aquatic life

Hi Mario, I hope you had a great weekend.

**Ex. 5 Deliberative Process (DP)**

The state is revising its chronic aquatic life criterion for mercury from 0.012 ug/L to 0.88 ug/L total recoverable (p. 16 attached).

**Ex. 5 Deliberative Process (DP)**

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Pete said he used the mercury conversion translator at: [https://www3.epa.gov/npdes/pubs/metals\\_translator.pdf](https://www3.epa.gov/npdes/pubs/metals_translator.pdf). The footnote to ND's Water Quality Criteria Table says "Except for the aquatic life values for metals, the values given in this appendix refer to the total (dissolved plus suspended) amount of each substance unless otherwise noted. For the aquatic life values for metals, the values refer to the total recoverable method for ambient metals analyses."

**Ex. 5 Deliberative Process (DP)**

the 1993 Prothro memo which says (attached p. 28) "... the NPDES rule does not require that State water quality standards be in the total recoverable form; rather, the rule requires permit writers to consider the translation between differing metal forms in the calculation of the permit limit so that a total recoverable limits can be established"

**Ex. 5 Deliberative Process (DP)**

I checked other R8 states' chronic ALC for mercury:

SD 0.77 ug/L

UT 0.012 ug/L

WY 0.77 ug/L\*

MT 0.91 \*\*

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) (which I shared with Pete Wax) the Biological Opinion from NMFS on ESA consultation for Idaho's toxics WQS, and NMFS's conclusion, that essentially says EPA's chronic WQC for mercury would not protect aquatic life and may even jeopardize the species, and recommends that Idaho move away from the organic number to a methyl mercury number.

## Ex. 5 Deliberative Process (DP)

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Thanks for your help on this issue.

Holly Wirick  
Water Quality Section  
U.S. EPA - Region 8  
(303) 312-6238  
(773) 882-1645 (cell)

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\*WY has similar footnote to ND. "Except for the aquatic life values for metals and where otherwise indicated the values given... refer to the total recoverable (dissolved plus suspended) amount of each substance. For aquatic life values for metals, the values refer to dissolved amount."

\*\*MT's footnote: Standards for metals (except aluminum) in surface water are based upon the analysis of samples following a "total recoverable" digestion procedure (EPA method 200.2, supplement 1, Rev 2.8, May 1994).

\*\*\* CO deleted EPA's recommended chronic ALC for mercury of 0.77 ug/L; the current water column standard of 0.01 ug/L total mercury remains in place and is intended to be implemented along side the fish tissue standard [0.3 mg methylmercury per kg fish tissue wet weight].